

**STATEMENT OF COLLEEN M. MURPHY, EXECUTIVE DIRECTOR
CONNECTICUT FREEDOM OF INFORMATION COMMISSION
TO THE GAE COMMITTEE CONCERNING
SB 1009, AN ACT CREATING THE OFFICE OF GOVERNMENTAL
ACCOUNTABILITY
MARCH 7, 2011**

Good morning Senator Slossberg, Representative Morin and members of the GA&E Committee. My name is Colleen Murphy and I'm the Executive Director and General Counsel of the Freedom of Information Commission ("FOIC" or "FOI Commission"). Thank you for the opportunity to comment today on SB 1009, An Act Creating the Office of Governmental Accountability. Let me say at the outset that none of my comments today should be perceived as unwillingness on the part of the Commission to share in the collective responsibilities that we all have to make financial sacrifices during these difficult fiscal times.

I. Background information about the FOIC.

Before reaching the substance of the bill, I would ask for the Committee's indulgence for a few moments to enable me to provide you with some background information about the FOIC.

The FOIC has been in existence for 35 years. It is a government oversight agency, whose mission is to ensure that the citizens of Connecticut have the most transparent and accountable government possible under current law. I am proud to say that the FOIC is a Connecticut jewel. It has been viewed as a model throughout the country and indeed throughout the world, because of its independence and because it brings to its citizens an inexpensive and fair process to resolve disputes on access to the recesses of government. You should be proud of it as well. Your Commission has attracted representatives from places like Mexico and China, countries where the notion of transparency was like reading science fiction until a short time ago. These representatives came to study the structure of the FOIC and the FOIA, and to model their own Commissions and laws after what our state has done. The CT FOIC has played a role in shining light on government and enhancing democracy well beyond the borders of our small state. In these tough economic times, I don't know what price you put on gems like this. But, I ask you to consider it when you reflect on the consolidation proposal before you.

As to the actual work of the FOIC, it has jurisdiction over all state and municipal agencies, as well as many quasi-public agencies and entities that perform the functions of government pursuant to large state contracts, such as those for managed care and emissions testing. It is very important for this committee to be aware that over the past several years, the FOIC has striven to put measures in place that streamline and make its work more efficient.

On average, the FOIC receives approximately 800 formal complaints a year. The complaints are wide-ranging, covering requests for records concerning radon testing in public schools, records regarding water safety and water quality and records concerning the expenditure of public funds. By and large, they deal with issues that are exceedingly important to citizens in their daily lives. At current budgetary levels, the FOIC could not possibly process and hold formal hearings on each of the complaints it receives. It has instituted a fine mediation program, through which a significant amount of its caseload is resolved without the time and expense of an administrative hearing. In each of the past three years, the Commission has resolved approximately 65% of its caseload through its mediation process. Clearly, this is important to recognize in terms of monetary and administrative efficiency. It is also beneficial because of the nature of the Commission's business, wherein information is so often time sensitive. Citizens receive more timely access to information, when appropriate, and agencies are able to close the books on FOI complaints relatively quickly and with little expense.

Moreover, the Commission has placed a great emphasis on education and has conducted close to 100 workshops, on an annual basis for the past several years, for thousands of citizens and public officials. Most recently, Commission staff conducted a training session for the Governor's staff and one is scheduled for the Lieutenant Governor's staff in the near future. This education measure is highly effective and goes a long way to resolving disputes before they happen.

Additionally, the FOIC fields between 8,000 and 10,000 question calls, annually, from members of the public, members of the media and public officials. The FOIC prides itself on its responsiveness and accessibility in this regard. Through this simple, cost-efficient mechanism, the FOIC is able to get callers answers to their questions, sometimes immediately, but always within a day's time. People don't always get the answer they want, but they do get assistance and can make decisions about how to proceed accordingly. Through this process, numerous complaints are averted.

The FOIC has invested in its web site as well, an investment which clearly pays off. In addition to its minutes and agendas, the FOIC makes its Commission decisions and advisory opinions available online. It is now working on placing court decisions online as well. This is a free and immediate resource for the public. It creates tremendous efficiencies, insofar as citizens need not contact or visit the Commission in order to obtain information that is important to them and which will help guide their conduct.

There are many more examples of the Commission's work that I would be happy to share with you. But in the interest of time, I will move on to the substance of the proposal before you.

II. The proposal will not achieve its goals and is not good public policy. The aim of this bill is to implement the proposal within the Governor's Budget for the FY

2011–FY 2013 Biennium that calls for the merger of the FOI Commission, Elections Enforcement Commission, Office of State Ethics, Judicial Review Council and the Contracting Standards Board into a new agency entitled the Office of Governmental Accountability (“OGA”). While the stated purposes for this merger (cost effectiveness and eliminating redundancies) sound appealing in view of Connecticut’s budgetary crisis, this proposal will not achieve its goals and is not good public policy.

a. The proposal will not achieve the modest savings that are claimed (approximately one million dollars) because it does not take into account the dollar costs of consolidation.

Once the costs of consolidation are netted out, it is apparent that no cost savings will be achieved. For example, the OGA will need a new computer system that will cover all units within the newly created five-pronged agency and that will support intra-agency security among units, while ensuring appropriate public access under the FOI Act. Similarly, the OGA will need an integrated telephone system. These items are clearly critical and necessary expenditures, particularly since the Governor has stated that an additional aim is to encourage “information sharing”: they will not be inexpensive. Similarly, the proposal does not reflect the costs associated with necessary facility changes. Will the five current agencies be relocated to one space that can accommodate all personnel and equipment? If so, the costs of relocation and restructuring will soar. Similarly, no accounting has been made for other related costs, such as signage, letterhead, et cetera. In addition, the new agency will likely yield significant personnel costs, as well as an added layer of bureaucracy (potentially in the form of deputy-level managers with specific subject matter expertise, who would report to the newly-appointed Executive Director). The bill before you does not speak to these costs.

What you have after the expenses are netted out is a new entity that will likely cost a significant amount of money. If the major aim of this proposal is to achieve savings from the five agencies, there are other potential ways to do so without changing their entire structures and causing the other problems set forth below.

b. The proposal does not take into account the cost to government transparency and accountability.

i. The Cost of Independence Lost. Under this proposal, the head of the new agency would be a gubernatorial appointee, serving at the pleasure of the Governor. It is feared that this proposed change would critically impair the ability of the agency, as a whole and its subordinate divisions, to do their jobs impartially, objectively and in the public interest.

ii. Conflicts Costs. “Streamlining” functions that do not flow from the same stream does not make good sense, particularly when it will lead to conflicts. The primary missions of these agencies are separate and distinct and will be at odds with one another.

For example, the FOIC is an agency whose primary mission is transparency, while the other agencies necessarily have a tremendous amount of confidentiality built into their records and processes. Merger will pose daily conflict issues. How will a combined staff handling all of the issues simultaneously serve a multitude of clients, with potentially directly competing interests?

In another but related vein, the FOIC is a government transparency agency, having jurisdiction and oversight over all of the other agencies in the proposed merger. The conflicts inherent in this arrangement are clear: How can a component of one agency decide complaints against another component of the same agency?; and how can one component of an agency sue another component of the same agency? These are very real questions. At present, there is already a court appeal pending between the FOIC and the OSE, and a second is anticipated. The issues in such cases turn on whether proceedings of the OSE are required to be conducted in public. Similarly, there are cases pending before the FOIC that have been filed against the SEEC and several have been adjudicated in the past. The FOIC has likewise adjudicated cases brought against the JRC.

Also, perhaps an even greater question arises: Who will represent the interests of each agency in court? At present, FOIC lawyers represent the agency in connection with court appeals and other matters affecting the Commission. See Conn. Gen. Stat. 1-206(b)(2)(d). The legislature enacted this provision with foresight and in recognition of the inevitable and direct conflicts that would occur if the Attorney General's Office were to represent both a state agency involved in an appeal of a FOIC decision and the FOIC itself. Under the OGA model, it is unclear whether one lawyer within the OGA would represent, for example, the OSE and another lawyer within the OGA would represent the FOIC or whether an Assistant Attorney General would represent the OSE and another Assistant Attorney General would represent the FOIC. Neither option is good: both options lead to conflict.

The proposed agency restructuring would present other areas of conflict. Court decisions issued on freedom of information, elections and ethics issues are rendered by Superior Court judges. Superior Court judges will be in the position of ruling on cases that arise from the same agency that reviews their conduct. Similarly, staff within the OGA might be called to work on cases in court that are presided over by superior court judges and then be asked to work on complaints concerning the very same judges.

These are a handful of the potential conflicts that would need to be addressed by the proposed merger and there are likely many more.

iii. Public Perception Costs. It is difficult to put a value on the cost of public perception at this time. But, the public will likely wonder how the OGA can fairly and independently rule on the multitude of issues before it relating to campaign finance, the electoral process, ethics, government transparency, contracts and judicial conduct, given

the aforementioned conflicts and the agency's potential loss of independence. The FOIC posits that the cost of public perception will likely be high.

c. The proposal will not eliminate redundancies.

While true that each of the agencies performs certain government oversight functions, that does not mean that they are well-suited to living within the same four walls. With respect to the FOIC, none of its functions overlap with the other four agencies. Its mission is ensuring that the citizens of Connecticut have the most transparent government permitted by law. Its placement within a much larger agency, and one which poses many conflicts, will not remove any duplicate core functions, and will, on the contrary, only impede its effectiveness.

III. The FOIC has grave concerns about the repealer provision in Section 35 of the bill.

a. The proposal will eliminate the FOIC's critical budgetary independence.

The proposal calls for a repeal of Conn. Gen. Stat. 1-205a of the FOI Act, which pertains to the FOIC's budget (and similar provisions that pertain to the OSE's and SEEC's budgets). Currently, Sec. 1-205a prohibits the Governor from reducing the FOIC's budget requests and requires the submission of the FOIC's budget directly to the legislature. There is important history behind the passage of Sec. 1-205a. In 2003, Governor Rowland proposed a consolidation of the FOIC, SEEC and the then State Ethics Commission, with a significantly reduced budget and staffing. Many believed that the consolidation and reduction were retribution for adverse rulings from the agencies. Although a fiscal crisis loomed at that time as well, the legislature understood that it was more important to protect the independence of the three agencies and to insulate them from similar attempts to emasculate them in the future. The legislature passed Public Act 04-204, enacting Sec. 1-205a, with near unanimous bipartisan support.

It is important to bear in mind too, that although the FOIC is part of the Executive Branch, it is not part of the governor's administration. It therefore makes sense for the FOIC's budget to be presented independently as part of the overall budget and for the FOIC to make its case directly and independently to the legislature.

b. The independence afforded in Sec. 1-205a has worked well and should not be revoked.

Section 1-205a does not provide unfettered independence. The legislature, with its collective voice, has appropriate oversight and control over the agency's budget. If enacted, the legislature would be ceding its authority back to the Governor. There is no reason to do so. The legislature has adjusted the agency's budget requests, with input from all sources, when it felt it was appropriate to do so. Further, the FOIC has not been immune to the vital call to reduce expenses. Since FY 08, the FOIC has instituted significant cost-saving measures that have resulted in voluntary lapses by the agency each year, ranging between 7.5% to 20.45%. Notably, these numbers are significantly higher

than they would have been had the FOIC been subject to the Governor's existing rescission authority.

In addition, the FOIC has repeatedly demonstrated its commitment to fiscal restraint, as evidenced by its FY 2011-2013 Biennium budget request. The FY 2011-2012 and FY 2012-2013 requests represent increases (of 6.9% and 1.95%, respectively) which can be attributed in total to mandatory personal service expenses (i.e., 27th payroll, collective bargaining increases and upgrades in accordance with a stipulated collective bargaining agreement entered into by the state) and necessary software and renewal purchases. Thus, the FOIC has done, and will continue to do its fair share (if given the opportunity), to find significant cost savings during these extremely difficult times.

The FOIC wants to help find the savings required by the Governor; but it does not want to lose its budgetary independence in the process. It is the Commission's hope that you will give this matter full consideration as well.

IV. Summary.

In closing, the FOIC urges this committee to weigh the impact of the merger proposal contained in this bill in a comprehensive light, including a review of the costs of consolidation, both in terms of actual dollars and in terms of the costs to government transparency and accountability. The FOIC functions well now, as a small, efficient, fully-operational and well-respected agency with an established tradition of independence and effectiveness. Merging the FOIC into a larger amalgam of other agencies offers only illusory benefits, while the harm to the people of this state will be significant.

Thank you again for your consideration of these very critical matters.

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